BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

BRIAN FLETCHER	)	
Claimant	)	
VS.	)	
	)	Docket No. 231,570
ROBERSON LUMBER COMPANY	)	
Respondent	)	
AND	)	
	)	
FREMONT COMPENSATION INSURANCE GROUP	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appeal from the preliminary hearing Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery on January 14, 1999.

ISSUES

The Judge ordered respondent to provide claimant certain recommended computer hardware. Respondent appeals contending the ALJ exceeded his jurisdiction because the items ordered do not constitute medical treatment within the meaning of K.S.A. 44-510 and K.S.A. 44-534a.

Claimant counters that the Appeals Board does not have jurisdiction to review the preliminary order. Also, claimant requests an award for attorney fees and costs pursuant to K.S.A. 44-536a.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the ALJ did not exceed his jurisdiction in entering the Order for Medical Treatment and, therefore, the Appeals Board does not have jurisdiction to review the reasonableness or necessity for the ordered equipment.

K.S.A. 1998 Supp. 44-551(b)(2)(A) authorizes the Board to review a preliminary award if it is alleged that the ALJ exceeded his authority in granting the relief requested at the preliminary hearing. This case turns upon whether the computer equipment falls within the meaning of the term "medical treatment" as used in K.S.A. 1998 Supp. 44-510(a). If the computer is medical treatment then the ALJ was within his authority to award same and this appeal should be dismissed. But if the computer equipment is not medical treatment then the ALJ exceeded his authority and the Appeals Board has jurisdiction to hear this appeal.

The Workers Compensation Act requires respondent to provide an injured worker such medical treatment as may be reasonably necessary to cure and relieve the injured worker from the effects of his injury.

> It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, and apparatus, and transportation to and from the home of the injured employee to a place outside the community in which such employee resides . . . as may be reasonably necessary to cure and relieve the employee from the effects of the injury.[1]

Respondent relies primarily upon the Court of Appeals' decision in Hedrick v. U.S.D. No. 259, 23 Kan. App. 2d 783, 935 P.2d 1083 (1997). Under the facts of that case a car was held not to fall within the definition of "medical treatment." The Court reasoned as follows:

> For purposes of this case, it is not necessary to devise a precise definition of "medical treatment." Certainly, examination, diagnosis, and application of remedies would not encompass the purchase of a car. The natural and ordinary meaning of "medical treatment" is not so broad as to include an automobile purchased to afford an individual "independence in transportation." Moreover, the purchase of a car goes far beyond the limited transportation authorized by 44-510(a). Under the facts of this case, we conclude that medical treatment does not include the purchase of a car.
>
> This conclusion is consistent with those cases which have applied another element of 44-510(a), the requirement that the medical treatment "be reasonably necessary to cure and relieve the employee from the effects of

[1] K.S.A. 1998 Supp. 44-510(a).

the injury." (citing Horn v. Elm Branch Coal Co., 141 Kan. 518, 41 P.2d 751 (1935)).[2]

In Hedrick, claimant had reached maximum medical improvement, had received a permanent partial disability award and was seeking partial reimbursement for the purchase of a larger vehicle pursuant to a post-award application for medical treatment. Ms. Hedrick's physician had recommended she obtain a larger vehicle because her physical limitations from the work-related injury made it difficult for her to use her compact car. This case is distinguishable from Hedrick in that claimant has not yet reached maximum medical improvement and the computer equipment is recommended for therapeutic purposes, not for work or affording claimant greater independence. In fact, the ALJ excluded from his order certain requested computer equipment that was not directly related to the intended therapeutic purpose such as the printer and voice driven word processing software.

The claimant is a 21-year-old man who was injured when the truck he was driving rolled over and caught fire. Claimant suffered burns to much of his upper torso and extremities that required months of hospitalization and extensive treatment. He wears splints on his arms 23½ hours per day and continues to receive daily medical care and treatment including physical, occupational and speech therapy.

Elizabeth Zayat, one of claimant's therapists at the Kansas Rehabilitation Hospital, incorporated the use of a laptop computer into his therapy program. She testified that computer use is a standard therapy in physical rehabilitation. In claimant's case this computer therapy has helped him to increase the stability of his wrists, his finger dexterity and his small and gross motor skills. Typing on the computer keyboard has helped claimant build up his strength and flexibility in his badly burned hands and fingers, and manipulating the cursor has helped him develop his neurological sensitivity and range of motion. The evidence is that claimant has received therapeutic benefit from the use of the computer. Such a benefit was absent from the factual situation presented to the Court of Appeals in Hedrick.

The issue before the Appeals Board is not the reasonableness or necessity of the computer to achieve the desired therapeutic result. Instead, the question is whether the use of the computer constitutes "medical treatment." In Hedrick the Court of Appeals found that the purpose for the car did not constitute therapy. But in this case the intended use of the computer has such an application. The fact that claimant may also derive some future vocational benefit from using the computer does not change the fact that claimant is currently receiving a therapeutic physical benefit. Accordingly, the computer fits within the meaning of "medical treatment" as intended by the Act. As such, the Appeals Board

[2] 23 Kan. App. 2d at 786.

is without jurisdiction to review the preliminary hearing order which is the subject of this appeal.

Finally, the Appeals Board declines to enter an order for attorney fees under K.S.A. 44-536a. The issue presented is well grounded in fact and law and the appeal does not appear to have been brought for any improper purpose.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the respondent's appeal from the Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery on January 14, 1999, should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

c: Kurt A. Level, Overland Park, KS
Gary R. Terrill, Overland Park, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director